

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

MICHAEL MILCHIN

CRIMINAL ACTION
NO. 17-00284-1

PAPPERT, J.

August 4, 2020

MEMORANDUM

Michael Milchin moves for compassionate release. Because extraordinary reasons do not warrant Milchin's release and the 18 U.S.C. § 3553(a) factors counsel against granting relief, the Court denies the Motion.¹

I

Just days before his trial in 2018, Milchin pleaded guilty to health care fraud, conspiracy to commit health care fraud, distribution of oxycodone, conspiracy to distribute oxycodone and possession of oxycodone with intent to distribute. *See* (Judgment 1, ECF No. 297). The Court sentenced him to a total of 168 months' incarceration. (*Id.* at 2.) So far, he has served about thirty-eight months of that sentence and is scheduled for release in July of 2029. *See* (Gov't Suppl. Resp. 2, ECF No. 426).

Following the onset of the COVID-19 pandemic, Milchin petitioned the warden of his prison for compassionate release. *See* (Suppl. Mot. for Release 2, ECF No. 444). The warden denied the request. (*Id.*)

¹ Because Milchin's appeal of his sentence is still pending, *see* (Notice of Appeal, ECF No. 346), the Court's "jurisdiction to decide the compassionate release motion [is] confined to denying it, indicating that it presents a substantial issue, or indicating that it would be granted if [the Third Circuit] were to remand the case . . . for that purpose," *United States v. Pawlowski*, --- F.3d ---, No. 20-2033, 2020 WL 4281503, at *1 n.2 (3d Cir. June 26, 2020); *see also* Fed. R. Crim. P. 37(a).

Having exhausted his prison remedies, Milchin now moves the Court to grant him compassionate release under 18 U.S.C. § 3582(c)(1)(A). *See (id.)*; (Mot. for Release 1, ECF No. 437). He argues that his “history of cardiac and respiratory issues” together with his obesity, high cholesterol and melanoma put him at grave risk of serious illness or death should he contract COVID-19. (Suppl. Mot. for Release 12.) And given the realities of prison life, Milchin contends, his chances of contracting COVID-19 are far higher than they would be if he were released. *See (id. at 2–12)*. But Milchin never mentioned any of these health problems at sentencing. *See generally* (Milchin’s Sentencing Mem., ECF No. 298). And though his prison medical records confirm that he is obese and has slightly elevated cholesterol, *see* (Gov’t Suppl. Resp. Ex. A, at 4, 78 ECF No. 455), those records belie his other claimed maladies, *see, e.g., (id. at 65)* (showing Milchin denied having a history of cardiovascular or respiratory problems and revealing no melanoma).

II

A district court may reduce an inmate’s sentence as a form of compassionate release only if “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A). But before releasing an inmate a court must also “consider[] the factors set forth in section 3553(a).” *Id.* Relevant factors include “the nature and circumstances of the offense” and the need for the sentence “to reflect the seriousness of the offense” and “protect the public from further crimes of the defendant.” *Id.* § 3553(a)(1), (2)(A), (C).

Milchin’s obesity and high cholesterol do not present an extraordinary and compelling reason for his release. High cholesterol is not a COVID-19 risk factor. *See* Coronavirus Disease 2019, *Your Health*, Center for Disease Control and Prevention,

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html> (last visited August 4, 2020). The Centers for Disease Control and Prevention reports that individuals with body mass indexes (or BMIs) above 30.0 are “at increased risk for severe illness from COVID-19.” *Id.* But with a BMI of 30.5, Milchin barely qualifies as obese. *See* (Gov’t Suppl. Resp. at 4 & n.4); (*id.* Ex. A, at 4). And until his latest weigh-in—after he had already moved for compassionate release—Milchin’s BMI never exceeded 30.0. *See* (*id.* at 17, 31, 42). Absent any evidence of other risk factors, Milchin’s slight obesity and elevated cholesterol are not enough to justify releasing him. *Cf. United States v. Takewell*, No. CR 3:14-00036, 2020 WL 4043060, at *2–3 (W.D. La. July 17, 2020) (reaching same conclusion for an obese inmate with hypertension); *United States v. Jones*, No. 2:18-CR-137, 2020 WL 3969912, at *4 (N.D. Ind. July 14, 2020) (same for inmate with hypertension and Type II Diabetes); *United States v. Gordon*, No. 15-20609, 2020 WL 3971013, at *3 (E.D. Mich. July 14, 2020) (same for an obese inmate with hypertension); *United States v. Hayes*, No. 3:18-CR-37-J-34JBT, 2020 WL 3611485, at *2 (M.D. Fla. July 2, 2020) (same); *United States v. Wax*, No. CR 14-251 (FLW), 2020 WL 3468219, at *2–3 (D.N.J. June 25, 2020) (same).

Even if extraordinary and compelling reasons did exist, the § 3353(a) factors counsel against releasing Milchin. He earned his 168-month sentence by leading a conspiracy to flood the community with highly addictive opiates. *See* (Milchin’s Sentencing Mem. 3–4). He preyed on hopelessly addicted individuals by recruiting them and others to fill fake prescriptions. *See* (Plea Mem. 6, ECF No. 263). His crimes very likely led to several drug overdoses. *See* (Milchin’s Sentencing Mem. 14–15); (Gov’t Sentencing Mem. 11, ECF No. 293). Releasing Milchin after just thirty-eight months

would not reflect the seriousness or the nature and circumstances of his offenses. *See* 18 U.S.C. § 3553(a)(1), (2)(A). And given Milchin’s past disregard for the public’s health and safety, the Court believes he remains a danger to the community. *See id.* § 3553(a)(2)(C). These considerations lead the Court to deny Milchin’s Motion. *See United States v. Pawlowski*, --- F.3d ---, No. 20-2033, 2020 WL 4281503, at *3 (3d Cir. June 26, 2020) (affirming denial of compassionate release for at-risk inmate because “the § 3553(a) factors weigh[ed]” against release).

An appropriate Order follows.

BY THE COURT:

/s/ **Gerald J. Pappert**
GERALD J. PAPPERT, J.